IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.THANKAPPAN

WEDNESDAY, THE 8TH AUGUST 2007 / 17TH SRAVANA 1929

CRL.A.No. 1370 of 2006()

AGAINST THE ORDER IN CC.294/2003 of JUDL.MAGISTRATE OF FIRST CLASS-II, KOLLAM

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APPELLANT: COMPLAINANT

VALSALA KUMARI, W/O.PASHUPALAN NAIR,
CHERIYAMPALLOOR VEEDU, KAVANADU P.O.,
KOLLAM-3.

BY ADV. SRI.K.RAMACHANDRAN

RESPONDENTS: ACCUSED AND STATE

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1. ABRAHAM GEORGE, GIJI VILLA,
KUREEPPUZHA, THRIKKADAVOOR, PERINADU P.O.,
KOLLAM, BAILING FROM VADAKKEPARAYIL VEEDU,
PERUMON P.O., PERINADU.

2. STATE OF KERALA, REPRESENTED BY
THE PUBLIC PROSECUTOR, HIGH COURT OF KERALA,
ERNAKULAM.

BY ADV. SRI.C.R.SIVAKUMAR -R1
PUBLIC PROSECUTOR SRI. THOMAS JOHN AMBOOKKAN

THIS CRIMINAL APPEAL HAVING BEEN FINALLY HEARD ON 08/08/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

K.THANKAPPAN, J.

CRL. APPEAL NO. 1370 OF 2006

Dated this the 8th day of August, 2007

JUDGMENT

This appeal is filed against the order in C.C. No.294 of 2003 on the file of the Judicial First Class Magistrate's Court II, Kollam. The appellant is the complainant.

2. The case of the complainant - appellant was that the accused - first respondent herein borrowed from her an amount of Rs. 2,30,000/- and issued two cheques in her favour towards discharge of the said liability which when presented to the bank for encashment were dishonoured due to insufficiency of funds in the account of the first respondent. After complying with the statutory provisions regarding notice etc., the complaint was filed. The first respondent appeared before the court below on summons and after closure of the evidence, the case was posted to 16.2.2006. On that day, the complainant was absent and the court below passed the impugned order.

3. This Court heard the learned counsel on either side and perused the order sheet of the court below.

4. It is seen that the evidence in the case was already over and what remained was to question the accused under Section 313 Cr.P.C. and arguments of the counsel on either side. An accused can be acquitted under Section 256(1) Cr.P.C. only when the court cannot proceed further without the presence of the complainant. In the present case, no such circumstance is mentioned. Hence, the order impugned cannot be sustained in law. In the above circumstances, the impugned order is set aside and the matter is remanded to the court below for fresh consideration from the stage at which the present order was passed.

The Crl. Appeal is allowed by way of remand. The parties shall appear before the court below on 15.9.2007.

(K.THANKAPPAN, JUDGE)

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